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TAGS: [ENRG](#) [ECON](#) [PGOV](#) [LH](#)  
SUBJECT: LITHUANIAN CONSTITUTIONAL COURT RULING MEANS  
LITHUANIAN NATIONAL ENERGY INVESTOR LEO LT,S SUPERVISORY  
AND MANAGEMENT BOARD LIKELY TO CHANGE

REF: 2008 VILNIUS 361

Classified By: Ambassador John A. Cloud for reasons 1.4 (b) and (d).

11. (C) Summary: A March 2 ruling by the Lithuanian Constitutional Court will likely result in changes to LEO LT,s supervisory and management boards, but will not lead to the demise of the energy holding company. Initial indications are that the current government -- no friend of Leo LT -- will satisfy itself with correcting the constitutional flaw and changing some members of the supervisory and management boards. The European Commission (EC) could still derail LEO LT, if it finds it is inconsistent with EU rules. End Summary.

#### THE COMPLAINT

12. (U) Lithuanian MPs asked the Constitutional Court on September 22, 2008 to decide if the formation of the national energy holding company, LEO LT, violated the constitution. The case focused on three issues: whether the GOL had the right to establish an energy monopoly via the formation of LEO, whether the non-competitive selection of VST, as the private partner within LEO, was a violation of constitutional directives, and whether public assets were put into an entity that might not use them for the public good.

#### LEO WILL LIVE ON

13. (U) The Court ruled that the Law on the Nuclear Power Plant, which established LEO, did not violate constitutional norms in establishing a monopoly because a new monopoly was not created. The court determined that LEO combined existing transmission and distribution monopolies. It likewise ruled that the selection of VST (a private Lithuanian electricity distributor), despite the absence of a tender or other competitive process, did not violate the constitution because there were no other potential private partners in Lithuania. The Court also said that no constitutional violation of consumer rights took place when LEO was created because the protection of consumer interests was not part of the law and the regulation of such rights in the energy sector is provided for in other legislation. In contrast, however, the law was found in violation of paragraph 3 of Article 46 of the Constitution, which requires that the State regulate economic activity in a manner that serves the welfare of the nation as well as paragraph 2 of Article 128 of the Constitution that provides for the management, use, and disposal of State property.

14. (C) Most observers believe that the relatively minor violations of the constitution can be (and will be) fixed through changes to LEO's management structure and small legal amendments. Chancellor of the Government (whose role is roughly that of a chief of staff for the prime minister) Deividas Matulionis told us March 4 that the prime minister had already tasked out the drafting of the required legal

amendments, which would be brought to a vote during the spring session of the parliament. The other changes would be to the managing and supervisory boards of the company, to give greater representation to the GOL. (Note: although the GOL owns 61.7 percent of LEO shares and VST's NDX Energija owns only 38.3 percent, currently only one supervisory board member is appointed by the GOL.) According to Arturas Dainius, an Undersecretary in the Ministry of the Economy and the GOL member of the supervisory board, the composition of the new board could be decided by the GOL and NDX, or parliament could choose to weigh in.

CLOUD